

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
NORTHERN DIVISION at COVINGTON

UNITED STATES OF AMERICA,	)	
	)	<b>ELECTRONICALLY FILED</b>
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	
CARMEUSE LIME AND STONE, INC.,	)	
	)	
Defendant.	)	
_____	)	

**COMPLAINT**

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), alleges:

NATURE OF THE ACTION

1. This is a civil environmental enforcement action pursuant to Section 113(b) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(b). The United States seeks civil penalties from Defendant Carmeuse Lime & Stone, Inc. (“Carmeuse”) for failure to comply with certain requirements set forth in a CAA permit issued to Carmeuse by the Kentucky Department for Air Quality (“KDAQ”) for the construction and operation of lime kilns at Carmeuse’s Black River Plant (“the Plant”), located in Butler, Pendleton County, Kentucky.

### JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and the Defendant pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in this District pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the facility is located in this District and the violations occurred in this District.

### NOTICES

4. On February 6, 2007, EPA issued a Notice of Violation (NOV) to Carmeuse for failure to comply with all requirements of the CAA permit issued to Carmeuse by KDAQ for the construction and operation of kilns at the Plant, and pursuant to 42 U.S.C. §§ 7413(a)(1) and (b)(1), EPA provided a copy of the Notice of Violation to the Commonwealth of Kentucky.

5. Pursuant to 42 U.S.C. § 7413, this Complaint is filed more than 30 days after issuance of the NOV.

6. The United States has notified the Commonwealth of Kentucky of the commencement of this action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

### THE DEFENDANT

7. Carmeuse is a for-profit corporation incorporated in the State of Delaware, with its principal place of business in Pittsburgh, Pennsylvania. Carmeuse was formerly known as Dravo Lime, Inc., and Dravo Lime Company (collectively “Dravo”) until Dravo was acquired by Carmeuse’s parent company, Carmeuse N.A., in 1998.

8. At all times relevant to this Complaint, Carmeuse and Dravo owned and operated the Plant, which processes lime for commercial use and utilizes lime kilns in connection with this process.

9. Carmeuse and Dravo are “persons” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

### CAA VIOLATIONS

10. The Commonwealth of Kentucky has implemented a federally approved State Implementation Plan (“SIP”) that is designed to ensure the attainment and maintenance of national ambient air quality standards (“NAAQS”) for those air pollutants for which air quality criteria have been issued pursuant to CAA Section 108, 42 U.S.C. § 7408.

11. As required by the CAA, the Kentucky SIP includes permitting requirements intended for the prevention of significant deterioration (“PSD”) of air quality in geographic areas which have achieved attainment of NAAQS, or which cannot be classified as to attainment due to lack of sufficient data, including the requirement that any major emitting facility located in a NAAQS attainment or unclassifiable area must obtain a PSD permit that sets forth emissions limitations and requires implementation of best available pollution control technology (“BACT”) before commencing construction.

12. At all times relevant to this complaint, the Plant has been and is a ‘major emitting facility’ within the meaning of CAA Section 169(1), 42 U.S.C. § 7479(1).

13. At all times relevant to this complaint, the Plant has been and is located in a NAAQS attainment or unclassifiable area.

14. The installation of additional lime kilns at the Plant during the 1990s was “construction” within the meaning of CAA Section 169(2)(C), 42 U.S.C. § 7479(2)(C).

15. On June 5, 1992, Carmeuse's predecessor, Dravo, submitted a PSD construction permit application to KDAQ for approval of the expansion of the Plant, including the installation of additional lime kilns.

16. On August 12, 1993, KDAQ granted Carmeuse a PSD construction permit (“the permit”) allowing the construction of new lime kilns (“new kilns”) and associated process equipment.

17. The PSD conditions set forth in the permit include emissions limits for certain air pollutants generated by the new kilns.

18. The permit also imposes BACT requirements including a requirement that fuel to be used for the new kilns must be coal having an average sulfur content of no more the 0.9% unless coal with a higher sulfur content is demonstrated to meet the nitrogen oxide, carbon monoxide, particulate and sulfur dioxide emissions limits listed in the permit.

19. Upon completion of the new kilns, KDAQ allowed the PSD construction permit to become the PSD operating permit.

20. Between 1995 and 2005, Carmeuse and its predecessor Dravo failed to comply with the BACT requirements of the PSD permit issued for the new kilns by burning a coal-petcoke blend having an average sulfur content in excess of 0.9%.

21. Each day that Carmeuse and Dravo failed to operate the new kilns in compliance with the conditions of the PSD permit issued for the new kilns, as set forth in the preceding paragraph, constitutes a separate violation of requirements of the PSD permit, the state operating

permit regulations in the Kentucky SIP (401 KAR 50:035), and CAA Section 502(a), 42 U.S.C. § 7661a(a).

22. Pursuant to CAA Section 113(b), 42 U.S.C. § 7413(b); the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890 (1990), amended by Pub. L. No. 104-134, § 31001(s)(1), 110 Stat. 1321-373 (1996) (28 U.S.C. § 2461 note); and 61 Fed. Reg. 69,360 (Dec. 31, 1996), Carmeuse is liable for a civil penalty of up to \$25,000 per day for each violation of the PSD permit, the state operating permit regulations in the Kentucky SIP (401 KAR 50:035), and CAA Section 502(a), 42 U.S.C. § 7661a(a) occurring before January 31, 1997; a civil penalty of up to \$27,500 per day for each violation of the PSD permit, the state operating permit regulations in the Kentucky SIP (401 KAR 50:035), and CAA Section 502(a), 42 U.S.C. § 7661a(a) occurring on or after January 31, 1997 but before March 16, 2004; and a civil penalty of up to \$32,500 per day for each violation of the PSD permit, the state operating permit regulations in the Kentucky SIP (401 KAR 50:035), and CAA Section 502(a), 42 U.S.C. § 7661a(a) occurring on or after March 16, 2004.

#### PRAYER FOR RELIEF

WHEREFORE, the United States of America respectfully requests the following relief:

A. A judgment in favor of Plaintiff United States of America assessing a civil penalty against Defendant Carmeuse Lime & Stone, Inc., for each day of violation of the Clean Air Act and the regulations and permits issued thereunder as alleged in this complaint, in the amount of \$25,000 for each violation occurring before January 30, 1997, \$27,500 per day for each violation occurring on or after January 30, 1997 but before March 16, 2004, and \$32,500 for each violation occurring on or after March 16, 2004;

- B. A judgment awarding Plaintiff its costs of this action; and
- C. Such further relief as the Court deems just and proper.

Respectfully submitted,

JAMES A ZERHUSEN  
ACTING UNITED STATES ATTORNEY

---

ANDREW SPARKS  
Assistant United States Attorney  
260 West Vine Street, Suite 300  
Lexington, KY 40507-1671  
Telephone: (859) 685-4831  
Facsimile: (859) 233-2533  
[Andrew.Sparks@usdoj.gov](mailto:Andrew.Sparks@usdoj.gov)

RONALD J. TENPAS  
Assistant Attorney General  
Environment and Natural Resources Division

STEVEN A. KELLER  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Telephone: (202) 514-5465  
Facsimile: (202) 514-2583  
[steve.keller@usdoj.gov](mailto:steve.keller@usdoj.gov)

OF COUNSEL:

ELIZABETH O'SULLIVAN  
Assistant Regional Counsel  
U.S. Environmental Protection Agency - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303